IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.861 OF 1988

The Oriental Insurance Co.Ltd. ...Appellant
Vs.
1.Ajit Damodaran
2.Ambalgam Challaya ...Respondents

Ms Anita Agarwal for the Appellant
Ms S.V.Sonawane for the Respondent No.1.

CORAM: A.S.OKA, J.
DATED: APRIL 17,2006.

ORAL JUDGMENT:

1. Heard learned Counsel for the parties. The Appellant-Oriential Insurance Company has taken exception to the Judgment and Award dated 25th February 1988 passed under the Motor Vehicles Act, 1939. By the impugned Judgment and Award, the Appellant-Insurance Company along with the owner of the concerned vehicle have been held liable to pay compensation of Rs.1,35,500/- to the original claimant (the Respondent No.1 herein).

2. Mrs.Agarwal, learned Counsel for the Appellant submitted that the document at exh.16 which is produced on record by the original Applicant itself shows that the at the relevant time the offending vehicle was insured with the New India Insurance Company Ltd. and there was no insurance coverage by the Appellant. She pointed out that the Appellant-Insurance Company has examined as many as nine

Officers of the Appellant-Company who have stated after verification of the record that the vehicle concerned was not insured with the Appellant on the date of accident. The learned Counsel further submitted that as the official record discloses that the vehicle was not insured on the relevant date with the Appellant-Company, The Appellant was not liable to pay compensation of Rs.1,35,500/-. The learned Counsel for the Respondents supported the impugned Judgment and Award.

3. The accident in question has taken place on 18th September 1981. The only issue to be decided is whether on that date of accident the vehicle concerned bearing Registration No.MRC 9701 was insured with the Appellant.

4. One Laxman Dhyanu Shinde, a Clerk in the R.T.O. office at Nagpada had been examined by the Respondent No.1. He brought before the Tribunal the M.V. register and C.B.register. On perusal of the registers, he stated that the vehicle in question was standing in the name of the C.Ambalgan on 18th September 1981. On the perusal of the C.B.Register, he stated that on the relevant date the motor car was insured with the Appellant covering the period from 1-8-1981 to 1-7-1982. The relevant extracts of the M.V. and C.B. registers were placed on record and were marked as Exh.16 and Exh.17 respectively. In the cross examination he

stated that the number of policy mentioned in the Exh. 16 and 17 is the same. In the cross examination, he stated that he has no personal knowledge as to who made the entries in the registers.

5. A perusal of the document at exh.16 shows that there is an entry made on 13th June 1980 that the Respondent No.2 was the owner of the vehicle. There is also an entry that for the period between 13th June 1980 to 12th June 1981 the vehicle was insured with the New India Assurance Company Ltd. The relevant date in our case is 18th September 1981. There is an entry made on the basis of order dated 8th April 1987 passed by D.T.O. which records that the vehicle concerned was insured with the Appellant for the period from 1-8-1981 to 31-7-1982. No suggestion was given in the cross examination to the Clerk of the R.T.O. office to the effect that the entry made on the basis of the order dated 8th April 1987 is illegal or it is made without following due procedure.

6. I have perused the evidence of various Officers of the Appellant-Company examined by the Appellant. The first witness is Gurunath Shankar Chandavarkar who stated that he contacted all divisions of the Appellant-Insurance Company to find out the insurance particulars of the offending vehicle. He stated that he contacted nine divisions of the

Appellant-Insurance company. On enquiry he found that the vehicle concerned was not insured with the Appellant-Company on the relevant date. He admitted that the Appellant-Company has nine Divisions in Bombay and there are several divisions throughout India. He stated that the Appellant-Company issued cover notes. He admitted that the Appellant did not check whether the number mentioned in R.T.O. record is the number appearing on a cover note issued by the Appellant. The other witnesses who are examined by the Appellant are from offices of nine divisions of the Appellant-Company with whom inquiry was made. Thus, the evidence of the Appellant is that a search was made in the offices of the nine divisions of the Appellant in Mumbai and it was found that there was no policy issued by the said divisions of the Appellant-company on the relevant date. The learned Member of the Tribunal in paragraph 9 of the impugned Judgment and Award has observed that the evidence of the Appellant was that the vehicle was never insured with any of the Divisions in Bombay of the Appellant. The learned Member has observed that the R.T.O. record shows that the vehicle was insured with the Appellant and the said insurance may be by any other division of the Appellant-Company in India.

7. In view of this position, no fault can be found with the Tribunal for accepting the record maintained by the R.T.O. as true and correct and holding that the Appellant-Company

was liable. Hence no case is made out for interference. First Appeal is dismissed with no order as to costs.

Judge.